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7 DISTRICT COUNCIL 16 NORTHERN
8 CALIFORNIA HEALTH AND WELFARE
9 TRUST FUND, et al.,
10 Plaintiffs,
11 v.
12 HERRON PAINTING CO., et al.,
13 Defendants.
14
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16 Case No. [23-cv-00458-TSH](#)
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18

19 **ORDER GRANTING MOTION TO
20 WITHDRAW AS COUNSEL WITH
21 CONDITIONS**

22 Re: Dkt. No. 37
23
24

25 **I. INTRODUCTION**

26 Littler Mendelson, P.C. and its attorneys Sarah Bryan Fask and Courtney Chambers move
27 to withdraw as counsel for Defendants Herron Painting Co., a California Partnership, Defendant
28 Kevin Herron individually and doing business as Herron Painting Co. (a sole proprietorship),
29 Defendant Herron Painting, Inc., a FTB Suspended California Corporation, and Defendant Dora
30 Herron (collectively, “Defendants”) pursuant to California Rule of Professional Conduct 1.16(b)
31 and Civil Local Rule 11-5. ECF No. 37. No opposition has been filed. The Court finds this
32 matter suitable for disposition without oral argument and **VACATES** the May 9, 2024 hearing.
33
34 *See* Civ. L.R. 7-1(b). For the reasons stated below, the Court **GRANTS** the motion. All deadlines
35 in this case are **STAYED** pending further order from the Court.
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1 II. BACKGROUND

2 Plaintiffs¹ filed this case on January 31, 2023 under the Employee Retirement Income
3 Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132, alleging Defendants failed to report and pay
4 required contributions and to pay union dues under the parties’ bargaining and trust agreements.
5 Littler Mendelson has represented Defendants throughout the litigation.

6 Littler filed the present motion on April 1, 2024, on the grounds that Defendants have
7 breached their contractual obligations outlined in the parties’ April 5, 2023 Engagement
8 Agreement and have rendered it unreasonably difficult for Littler to carry out its representation
9 effectively. The agreement provides that Littler “require[s] [Defendants’] cooperation in
10 connection with [their] representation,” and Littler may withdraw from further representation in a
11 manner consistent with its ethical obligations if Defendants “fail in [their] payment or cooperation
12 obligations.” Chambers Decl. ¶ 2, ECF No. 37-1.

13 III. LEGAL STANDARD

14 Civil Local Rule 11–5(a) provides that “[c]ounsel may not withdraw from an action until
15 relieved by order of Court after written notice has been provided, reasonably in advance, to the
16 client and to all other parties who have appeared in the case.” The decision to permit counsel to
17 withdraw is within the sound discretion of the trial court. *United States v. Carter*, 560 F.3d 1107,
18 1113 (9th Cir. 2009). When addressing a motion to withdraw, the consent of the client is not
19 dispositive. *Robinson v. Delgado*, 2010 WL 3259384, at *2 (N.D. Cal. Aug. 18, 2010)). Rather,
20 the court must consider factors such as the reason counsel seeks to withdraw, the possible
21 prejudice caused to the litigants, and the extent to which withdrawal may delay resolution of the
22 case. *Id.*

23 Additionally, Civil Local Rule 11–4(a)(1) mandates compliance with the standards of
24 professional conduct required of members of the State Bar of California. *See also Nehad v.*

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26 ¹ Plaintiffs are the District Council 16 Northern California Health and Welfare Trust Fund; Bay
27 Area Painters and Tapers Pension Trust Fund, including the Bay Area Painters and Tapers
28 Pension Trust Fund and Annuity Plan; District Council 16 Northern California Journeyman and
Apprentice Training Trust Fund, Robert Williams, John Maggiore, Robert Williams, and Sal
Madrigal.

1 *Mukasey*, 535 F.3d 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct to
2 attorney withdrawal). Counsel must take steps to avoid reasonably foreseeable prejudice to the
3 rights of the client, including giving sufficient notice to the client to allow time for employment of
4 other counsel, complying with Rule of Professional Conduct 1.16(e) (regarding the return of all
5 client materials and property), and complying with all other applicable laws and rules. *El Hage v.*
6 *U.S. Sec. Assocs., Inc.*, 2007 WL 4328809, at *1 (N.D. Cal. Dec. 10, 2007).

7 IV. DISCUSSION

8 Based on the record in this case, the Court finds withdrawal is appropriate. California Rule
9 of Professional Conduct 1.16 provides several enumerated grounds pursuant to which counsel may
10 properly seek to withdraw from a representation, including when “the client by other conduct
11 renders it unreasonably difficult for the lawyer to carry out the representation effectively.” Cal.
12 Rule of Prof. Conduct 1.16(b)(4). Littler has attempted to contact Defendants multiple times since
13 mid-February and has been unsuccessful in its attempts to communicate with them. Chambers
14 Decl. ¶¶ 7-11. The parties did attend a settlement conference with Magistrate Judge Lisa J.
15 Cisneros on February 14, 2024. ECF No. 34. According to Littler, the settlement conference was
16 unsuccessful, but the parties agreed to schedule a second settlement conference after Defendants
17 provided specific documentation required to establish a hardship exception for the alleged
18 payments owed to Plaintiffs. Chambers Decl. ¶ 6. These documents were due to opposing
19 counsel on March 6 and the second settlement conference was scheduled for April 18, 2024. *Id.*
20 Littler has contacted Defendants multiple times about the status of the documents, both via email
21 and text message, but Defendants have not replied. *Id.* ¶¶ 7-11. Additionally, Littler informed
22 Defendants on three separate occasions of its intent to withdraw as counsel, but Defendants have
23 not responded. *Id.* ¶¶ 9-11. The Court finds Defendants’ failure to provide Littler with
24 information required for the defense of this case and failure to communicate in any way with
25 Littler provides good cause to permit Littler’s withdrawal from this case. *See Johnson v. GTD*
26 *Ventures, LLC*, 2022 WL 2342646, at *2 (N.D. Cal. June 29, 2022) (granting motion to withdraw
27 under Rule 1.16(b)(4) due to “irretrievable breakdown of communication”); *Tabak v. Apple, Inc.*,
28 2021 WL 6332780, at *2 (N.D. Cal. Dec. 9, 2021) (granting withdrawal under Rule 1.16(b)(4) due

1 to “breakdown in communication”); *Harman v. Ahern*, 2015 WL 4043244, at *2 (N.D. Cal. July 1,
2 2015) (failure to communicate constitutes good cause for withdrawal); *Ortiz v. Freitas*, 2015 WL
3 3826151, at *2 (N.D. Cal. June 18, 2015) (“Mr. Ortiz’s failure to maintain regular contact with his
4 counsel and cooperate in moving the litigation forward constitutes good cause for withdrawal.”);
5 *Orange Cty. Elec. Indus. Health & Welfare Trust Fund v. Moore Elec. Contracting*, 2011 WL
6 2940311, at *2 (N.D. Cal. July 20, 2011) (“Additionally, the inability to communicate with the
7 client renders Ashman’s continued representation unreasonably difficult.”).

8 Rule 1.16 also provides that counsel may seek to withdraw from representation when a
9 “client breaches a material term of an agreement with, or obligation, to the lawyer relating to the
10 representation.” Cal. Rule of Prof. Conduct 1.16(b)(5). It is well settled that failure to pay
11 attorneys’ fees provides a sufficient basis on which to grant a request to withdraw. *See Orange*
12 *Cty. Elec. Indus. Health & Welfare Trust Fund*, 2011 WL 2940311, at *2; *Kannan v. Apple Inc.*,
13 2020 WL 75942, at *2 (N.D. Cal. Jan. 7, 2020) (granting motion to withdraw where plaintiff “has
14 refused or failed to pay costs and fees incurred during the past two and a half months.”); *St.*
15 *Matthews Baptist Church of Livermore, Inc. v. Found. Cap. Res., Inc.*, 2015 WL 527669, at *2
16 (N.D. Cal. Feb. 6, 2015) (“The Court finds that St. Matthew’s failure to pay attorney’s fees
17 constitutes good cause for withdrawal.”). Here, Defendants expressly agreed they would pay the
18 monthly attorneys’ fees and expenses incurred by Littler. Chambers Decl. ¶ 2. Defendants further
19 agreed that Littler reserved the right to withdraw from further representation if Defendants failed
20 in its payment or cooperative obligations. *Id.* However, despite Littler providing monthly
21 invoices and repeatedly requesting Defendants stay up to date on their payments, Defendants have
22 failed to pay fees and expenses incurred by Littler. *Id.* ¶ 5. This also constitutes good cause for
23 withdrawal.

24 Littler has also complied with the requirements of Civil Local Rule 11-5(a) and the
25 California Rules of Professional Conduct by providing reasonable advance notice to Defendants of
26 their intent to withdraw as counsel of record and by providing reasonable time for Defendants to
27 obtain substitute counsel.

28 Based on this record, the Court finds good cause exists to permit Littler’s withdrawal.

1 However, corporations such as Herron Painting, Inc. can only appear through licensed counsel.
2 *See Civ. L.R. 3-9(b); Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S.
3 194, 202 (1993) ("It has been the law for the better part of two centuries . . . that a corporation
4 may appear in the federal courts only through licensed counsel.") (citations omitted); *Bourbeau v.*
5 *Cognitive Code Corp.*, 693 F. App'x 499, 503 (9th Cir. 2017) (affirming district court's dismissal
6 based on corporation's failure to retain counsel). As it is unclear if Defendants are aware of this
7 requirement, the Court shall grant Littler's motion to withdraw on the condition that it remain
8 counsel of record to serve all filed documents on Defendants until the corporate entities retain
9 alternate counsel as provided by Civil Local Rule 11-5(b). Defendants must file substitution of
10 counsel by May 17, 2024. Defendants are advised that failure to retain substitute counsel could
11 result in the entry of default judgment against the corporate entities. *See Emp. Painters' Trust v.*
12 *Ethan Enters., Inc.*, 480 F.3d 993, 998 (9th Cir. 2007) (affirming entry of default judgment where
13 corporate defendant failed to obtain substitute counsel); *United States v. High Country Broad. Co.,*
14 *Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (same).

15 V. CONCLUSION

16 For the reasons stated above, the Court **GRANTS** Littler Mendelson, P.C.'s motion to
17 withdraw as counsel for Defendants. However, because Defendants have not consented to the
18 withdrawal and no substitution of counsel has been filed on their behalf, the motion is granted on
19 the condition that Littler remain counsel of record to serve all filed documents on Defendants until
20 a substitution of counsel is filed. *See Civ. L.R. 11-5(b)*. For all such documents, Defendants shall
21 e-file proof of service within three business days of filing.

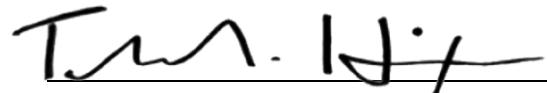
22 Because corporations may not appear in federal court except by counsel, Defendants have
23 until May 17, 2024 to find substitute counsel for the corporate entities. Defendants are advised
24 that failure to retain substitute counsel could result in the entry of default judgment against them.
25 All deadlines in this case are **STAYED** pending further order from the Court.

26 As the individual defendants may choose to represent themselves, the Court directs their
27 attention to the Handbook for Litigants Without a Lawyer, which is available at the Clerk's Office
28 or online at <http://cand.uscourts.gov/prosehandbk>. Defendants may also wish to seek assistance

1 from the Legal Help Center, a free service of the Volunteer Legal Services Program, by emailing
2 fedpro@sfbar.org or calling 415-782-8982, or by signing up for an appointment on the 15th Floor
3 of the Federal Courthouse in San Francisco, 450 Golden Gate Avenue, San Francisco, California.
4 At the Legal Help Center, you will be able to speak with an attorney who may be able to provide
5 basic legal help but not representation. More information is available at
6 <http://cand.uscourts.gov/helpcentersf>.

7 **IT IS SO ORDERED.**

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9 Dated: April 19, 2024



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11 THOMAS S. HIXSON
United States Magistrate Judge